

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 1. Administrative Operations [AMENDED]

SUMMARY:

The proposed changes amend Part 5. Administrative Proceedings Related to Tax Protests and Part 7. Abatement of Erroneous Tax Assessment of Subchapter 5. Practice and Procedure. The proposed revisions streamline and modernize the various procedural processes, both formal and informal, by which a party aggrieved by any action of the Tax Commission in the performance of its functions may seek a remedy.

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

AUTHORITY:

68 O.S. § 203; 75 O.S. § 302; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., February 7, 2023, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:30 p.m., on Wednesday, February 8, 2023, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor,

professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at <http://www.tax.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at <http://www.tax.ok.gov>.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

CHAPTER 1. ADMINISTRATIVE OPERATIONS
SUBCHAPTER 5. PRACTICE AND PROCEDURE
PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-22. Commencement and numbering of a protest

(a) Protests must be commenced by filing a timely written protest with the office of any Commissioner, the director of the division out of which the controversy arose, the office of the Administrative Law Judges, or the office of the General Counsel. In order for a protest to be considered timely, it must be filed, pursuant to Oklahoma Statutes, within sixty (60) days after the date of the mailing of the assessment, unless an extension is granted in writing within the sixty (60) day period.

(b) The Administrative Law Judges' Office assigns a case number of a protest of proposed assessment or protest to denial of claim for refund (both called "protest" herein), creates a court file, assigns a Judge and sets a day for a pre-hearing conference between the parties and the Administrative Law Judge.

710:1-5-28. Pre-hearing conference

(a) **General provisions.** A pre-hearing conference notice is sent to the parties, usually within sixty (60) days of the filing of the protest, but not less than twenty (20) days prior to the pre-hearing conference date. The purpose of the pre-hearing conference is to get the parties together before the Administrative Law Judge to attempt to resolve the case or parts of it, early in the progression of the case, to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and to propose a procedural schedule. However, the pre-hearing conference should not serve as the ~~parties~~ parties' introduction to the case. Rather, the parties are to make contact and discuss the merits of the case prior to the scheduled pre-hearing conference.

(b) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Administrative Law Judge makes all necessary rulings. After the pre-hearing conference, the Administrative Law Judge issues a pre-hearing conference order which reduces to writing the agreements reached at the pre-hearing conference.

(c) **Failure to appear.** If a party fails to appear at the scheduled pre-hearing conference or to timely respond to the notice of pre-hearing conference, but has previously submitted a written request for a hearing on the protest, then a hearing will be set. If a hearing has **not** been requested, then the Administrative Law Judge may close the record and issue Findings, Conclusions and Recommendations based on information in the record or may request the Division to file a Verified Response. A Verified Response is will be directed by the Administrative Law Judge to file a response to the issues raised in the protest, verified by the Division and signed by the attorney representing the Division. If a party files a reply to the Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge may set the matter for hearing on the merits of the protest, and thereafter, enter Findings, Conclusions and

Recommendations ~~recommendations~~ to the Commission ~~in accordance with the findings~~. If a party files a reply to the Verified Response and does **not** request a hearing, then the Administrative Law Judge will consider the reply in making Findings, Conclusions and Recommendations ~~a recommendation~~ to the Commission. If a party fails to file a reply to the Verified Response, then the Administrative Law Judge will issue Findings, Conclusions and Recommendations. Any party aggrieved by the Findings, Conclusions and Recommendations ~~recommendation~~ may proceed pursuant to 710:1-5-40.

710:1-5-32. Conduct of hearing

Administrative proceedings are conducted by the Oklahoma Tax Commission pursuant to the following procedures:

(1) **Appearances; motions; preliminary matters; oaths.** The burden of proof is generally on the taxpayer. The hearing will be convened by the Administrative Law Judge, appearances noted, and any motions or preliminary matters will be considered. The Administrative Law Judge shall administer oaths or affirmations to the witnesses. If the taxpayer fails to appear for the hearing, the Administrative Law Judge may consider the matter submitted for decision and shall issue Findings, Conclusions and Recommendations based on the information contained in the record.

(2) **Argument; witnesses; evidence.** Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, in the discretion of the Administrative Law Judge, upon matters relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.

(3) **Discretion of Administrative Law Judge in certain matters.** The Administrative Law Judge may question any party or any witness. The Administrative Law Judge shall establish the order of proceeding, but regardless of the order, the taxpayer is entitled to open and conclude in arguments. The Administrative Law Judge is responsible for closing the record, and may hold it open for stated purposes. Parties may submit proposed Findings, Conclusions and Recommendations at any time after notice of the hearing, but prior to closing of the record. Parties may request that the record be held open for this or other purposes.

710:1-5-34. Rules of evidence

(a) **Rules governing; admissibility; objections.** The rules of evidence as applied in non-jury, civil cases in the district courts of this State shall be followed in administrative proceedings related to tax protests except when it is necessary to ascertain facts not reasonably susceptible of proof under those rules. In that event, evidence not admissible under the Rules of Evidence may be admitted, if

it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, part or all of the evidence may be received in written form if the hearing will be expedited and the interest of the parties will not be substantially prejudiced.

(b) **Certification of issues.** A party to the proceedings who objects to a ruling of the Administrative Law Judge may request and obtain certification of the issue to the Commission for a decision prior to the issuance of Findings, Conclusions and Recommendations by the Administrative Law Judge. The signatures of the ~~taxpayer's representative, the tax division attorney~~ requesting party and the Administrative Law Judge must be upon the certification.

710:1-5-45. Service of documents

Service of any document in an administrative proceeding may be accomplished by personal delivery, ~~or~~ by mailing such document addressed to the party or ~~his~~ the party's authorized representative at the last known address, postage prepaid, ~~or by electronic mail to the address provided by the party or the party's authorized representative.~~ The document shall indicate on its face by Certificate of Service or of Mailing that copies have been served on parties of record.

710:1-5-46. Dismissal of case

(a) **Voluntary dismissal.** A protestant may dismiss his or her protest, or the tax division whose action or proposed action has been protested may withdraw its action or proposed action, without a motion therefor, at any time prior to the entry of a final order by the Commission.

(b) **Dismissal for mootness.** "Moot", for purposes of this Subchapter means that a case presents no actual controversy or that the issues have ceased to exist. A protest that is or has become moot may be dismissed by the Commission or by the Administrative Law Judge on their own motion or on the motion of a party. At least fifteen (15) days' notice of the motion or intent to dismiss shall be given to all parties, who shall have the opportunity to respond and show cause why the protest should not be dismissed. A dismissal by the Administrative Law Judge is appealable to the Commission in the same manner as appeals from other rulings by the ~~ALJ~~ Administrative Law Judge.

(c) **Dismissal for lack of jurisdiction.** The Tax Commission is without jurisdiction to consider a protest that is not filed within the time provided by statute. The question of the Commission's jurisdiction to consider a protest may be raised at any time, by a party, the Administrative Law Judge, or the Commission itself. Questions as to the authority, propriety, or timeliness of the tax division's action or proposed action shall not be raised by a motion to dismiss, but shall be raised as defenses to such action or proposed action, as a part of or addition to the protest.

(d) **Motion to dismiss.** A motion filed by a party to dismiss a protest for lack of

jurisdiction, or a notice by the Administrative Law Judge or the Commission of intent to dismiss a protest on jurisdictional grounds, shall state the reasons therefore, shall be filed in the case, and shall be mailed to all parties or their authorized representatives. All motions to dismiss filed by a party shall be accompanied by proposed Findings, Conclusions and Recommendations. The motion or notice of intent to dismiss shall be set for hearing, which shall not be less than fifteen (15) days after the filing of such motion or notice of intent, at which time any party opposing such motion or notice of intent may appear and show cause why the protest should not be dismissed. Notice of the date, time and place of the hearing shall be mailed to the parties or their representatives along with the motion or notice of intent to dismiss. Failure of a party to appear at the hearing on a Motion to Dismiss may result in the Administrative Law Judge issuing Findings, Conclusions and Recommendations based on the information in the record. The Administrative Law Judge may issue Findings, Conclusions and Recommendations at the close of a hearing on the motion, or within thirty (30) days after the hearing.

710:1-5-47. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. ~~If, upon hearing,~~ the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

PART 7. ABATEMENT OF ERRONEOUS TAX ASSESSMENT

710:1-5-74. Notification of initial disposition of abatement request; procedure upon denial by Division

Should the Division not agree that the evidence presented demonstrates that the assessment, or some portion thereof, is clearly erroneous, the Division shall notify the taxpayer of its determination. The notification letter shall state prominently that should taxpayer disagree with the Division's determination, taxpayer must make written request for a review of the determination, to the General Counsel's office within thirty (30) days of the ~~mailing date~~ of the Division notification. Failure of taxpayer to seek review within thirty (30) days of the ~~mailing date~~ of the Division's notification shall constitute abandonment of the request.

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 1 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed changes amend Part 5. Administrative Proceedings Related to Tax Protests and Part 7. Abatement of Erroneous Tax Assessment of Subchapter 5. Practice and Procedure. The proposed revisions streamline and modernize the various procedural processes, both formal and informal, by which a party aggrieved by any action of the Tax Commission in the performance of its functions may seek a remedy.

CLASSES AFFECTED: All taxpayers aggrieved by any action of the Tax Commission; parties to an administrative proceeding; and Tax Commission administrative law judges.

PERSONS BENEFITED: All parties will benefit from increased clarity and efficiency of administrative and judicial processes.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: December 13, 2022